



April 10, 2009

ENGROSSED HOUSE BILL No. 1167

DIGEST OF HB 1167 (Updated April 9, 2009 12:26 pm - DI 106)

Citations Affected: Noncode.

Synopsis: Asbestos. Urges the general assembly to assign to a study committee the topic of liability for asbestos related illnesses.

Effective: Upon passage.

Tyler, Lawson L, Niezgodski

(SENATE SPONSORS — BECKER, ARNOLD, SIMPSON, ERRINGTON)

January 13, 2009, read first time and referred to Committee on Labor and Employment.
January 27, 2009, reported — Do Pass.
January 29, 2009, read second time, amended, ordered engrossed.
January 30, 2009, engrossed.
February 24, 2009, read third time, passed. Yeas 51, nays 47.

SENATE ACTION

February 25, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.
April 9, 2009, amended, reported favorably — Do Pass.

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EH 1167—LS 6556/DI 102+



April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1167

A BILL FOR AN ACT concerning asbestos.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. [EFFECTIVE UPON PASSAGE] **The general**
2 **assembly urges the legislative council to assign to an interim or**
3 **statutory study committee the topic of liability for asbestos related**
4 **illnesses. If a committee is assigned the topic recommended for**
5 **study by this SECTION, the committee shall consider the**
6 **following:**

7 (1) **The appropriate period of repose or limitation for an**
8 **action concerning liability for asbestos related illnesses, in**
9 **light of current medical understanding of mesothelioma and**
10 **other asbestos related illnesses.**

11 (2) **Which persons involved in the production, manufacture,**
12 **sale, use, or installation of asbestos and asbestos containing**
13 **materials should be held liable for asbestos related illnesses.**

14 (3) **Which persons suffering from an asbestos related illness**
15 **should be eligible to bring an action based on the asbestos**
16 **related illness.**

17 (4) **How many and which Indiana companies may be subject**

EH 1167—LS 6556/DI 102+



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1 to civil liability based on an asbestos related illness.

2 (5) How many victims of asbestos related illnesses reside in
3 Indiana, how these victims were exposed to asbestos, and
4 which asbestos related illnesses the victims have contracted.

5 (6) The availability and effectiveness of workers'
6 compensation for victims of asbestos related illnesses.

7 (7) Funding with respect to programs to benefit victims of
8 asbestos related illnesses.

9 (8) Any other issue related to liability arising from exposure
10 to asbestos.

11 SECTION 2. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1167, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

NIEZGODSKI, Chair

Committee Vote: yeas 6, nays 5.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1167 be amended to read as follows:

Page 5, line 3, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 5, line 41, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 7, line 32, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 8, line 4 delete "34-6-2-52);," and insert "**34-6-2-52(b));**".

Page 8, line 10, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 8, line 17, delete "34-6-2-52)" and insert "**34-6-2-52(b))**".

Page 8, between lines 38 and 39, begin a new paragraph and insert:

"SECTION 4. IC 34-6-2-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11.5. "Asbestos claim", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-1.**

SECTION 5. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 29.5 "Corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-2."**

Page 8, line 40, after "52." insert "**(a)**".

Page 8, line 41, delete "IC 34-20-3-2 and".

Page 9, between lines 9 and 10, begin a new paragraph and insert:

"(b) "Hazardous substance", for purposes of IC 34-20-3-2, means a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies, or commission.



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SECTION 7. IC 34-6-2-71 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 71. (a) "Insurer", for purposes of IC 34-18, has the meaning set forth in IC 34-18-2-17.

(b) "Insurer", for purposes of IC 34-53, has the meaning set forth in IC 27-1-2-3.

(c) **"Insurer", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-3.5**

SECTION 8. IC 34-6-2-142.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 142.5. "Successor asbestos related liability", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-4.**

SECTION 9. IC 34-6-2-143.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 143.8. "Transferor corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-5."**

Page 9, line 11, after "(a)" insert **"Except as provided in subsection (d),"**.

Page 9, line 12, delete "on" and insert "on:".

Page 9, line 13, reset in roman "(1) property damage resulting from".

Page 9, line 13, after "asbestos;" insert **"a hazardous substance (as defined in IC 34-6-2-52(b));"**.

Page 9, line 13, reset in roman "or".

Page 9, line 14, reset in roman "(2)".

Page 9, line 15, after "substance" insert **"(as defined in IC 34-6-2-52(b));"**.

Page 9, line 16, before "must" insert **"occurring within ten (10) years after the delivery of the product to the initial user or consumer,"**.

Page 9, line 20, after "substance" insert **"(as defined in IC 34-6-2-52(b))"**.

Page 9, delete lines 24 through 32 and insert:

"(c) A product liability action for property damage accrues on the date when the injured person knows that the property damage has resulted from ~~asbestos~~: **a hazardous substance (as defined in IC 34-6-2-52(b))**.

(d) ~~This section applies only to A product liability actions action~~ against

~~(1) persons who mined and sold commercial asbestos; and~~

~~(2) funds that have, as a result of bankruptcy proceedings or to~~

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avoid bankruptcy proceedings, been created for the payment of ~~asbestos~~ **hazardous substance (as defined in IC 34-6-2-52(b))** related disease claims or ~~asbestos~~ **hazardous substance (as defined in IC 34-6-2-52(b))** related property damage claims, **must be commenced within two (2) years after the cause of action accrues, and claims against these funds are not subject to the ten (10) year period as described in subsection (a).**

(e) This section applies to all product liability actions that are based on property damages or personal injury, disability, disease or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that accrue before, on, or after July 1, 2009.

(f) A product liability action that is based on property damage or personal injury, disability, disease, or death resulting from exposure to hazardous substances (as defined in IC 34-6-2-52(b)) that was barred on July 1, 2009, by a period of limitations or repose that was in effect before July 1, 2009, may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary."

Page 9, line 38, delete "(d)" and insert "(g)".

Page 9, line 42, delete "(e)" and insert "(h)".

Page 10, after line 5 begin a new paragraph and insert:

"SECTION 11. IC 34-31-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 8. Limited Liability Concerning Asbestos Related Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, losses, indemnifications, contribution, or other relief concerning asbestos, including:

(1) a claim relating to the health effects of exposure to asbestos, including:

(A) personal injury;

(B) death;

(C) mental injury;

(D) emotional injury;

(E) risk of disease or other injury; or

(F) the costs of medical monitoring or surveillance;

(2) a claim made by or on behalf of any person exposed to asbestos, including a claim of a:

(A) representative;

(B) spouse;

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- (C) parent;
 - (D) child; or
 - (E) other relative;
- of a person exposed to asbestos; and
- (3) a claim for damage or loss caused by the:
 - (A) installation;
 - (B) presence; or
 - (C) removal of asbestos.

Sec. 2. As used in this chapter, "corporation" means a corporation for profit, including a domestic corporation organized under Indiana law or a foreign corporation organized under the law of a jurisdiction other than Indiana.

Sec. 3. As used in this chapter, "insurer" means a company, firm, partnership, association, order, society, or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal or interinsurers, or individual underwriters.

Sec. 4. As used in this chapter, "successor corporation" means a corporation that:

- (1) assumes;
- (2) incurs;
- (3) has assumed; or
- (4) has incurred;

successor asbestos related liability.

Sec. 5. As used in this chapter, "successor asbestos related liability" means any liability that is related to an asbestos claim that was assumed or incurred by a corporation as a result of:

- (1) a merger or consolidation with another corporation;
- (2) the plan of merger or consolidation related to the merger or consolidation; or
- (3) the exercise of control or the ownership of stock of the corporation before the merger or consolidation.

Sec. 6. As used in this chapter, "transferor corporation" means a corporation from which a successor asbestos related liability was assumed or incurred.

Sec. 7. (a) Subject to subsections (c) and (d) and sections 10 and 12 of this chapter, the cumulative successor asbestos related liabilities of a successor corporation are limited to the fair market value of the total gross assets of the transferor corporation, determined as of the time of the merger or consolidation through which the successor corporation assumed or incurred successor asbestos related liability.

(b) A successor corporation is not responsible for successor

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asbestos related liability in excess of the limitation set forth in subsection (a).

(c) For purposes of this section, if a transferor corporation assumed or incurred successor asbestos related liability in connection with a merger or consolidation with a prior transferor corporation, the fair market value of the total gross assets of the prior transferor corporation determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) to determine the limitation of liability of the successor corporation.

(d) Cumulative successor asbestos related liabilities include liabilities that exist after the merger or consolidation of the successor corporation and the transferor corporation and that are paid or discharged by or on behalf of the:

- (1) successor corporation; or
- (2) transferor corporation;

as part of a settlement or judgment in Indiana or another jurisdiction.

Sec. 8. The limitations set forth in section 7 of this chapter apply to a corporation that is a successor corporation and became a successor corporation before January 1, 1972, or is a successor of that corporation's successors.

Sec. 9. The limitations set forth in section 7 of this chapter do not apply to:

- (1) worker's compensation benefits paid by or on behalf of an employer to an employee under IC 22-3 or a comparable worker's compensation law in another jurisdiction;
- (2) a claim against a corporation that is not a successor asbestos related liability;
- (3) any obligation under the federal National Labor Relations Act (29 U.S.C. 151, et seq.);
- (4) a collective bargaining agreement;
- (5) an insurer as defined in section 3 of this chapter.
- (6) a successor corporation that after a merger or consolidation continued in the business of:
 - (A) mining asbestos;
 - (B) selling or distributing asbestos fibers;
 - (C) manufacturing, distributing, removing, or installing asbestos containing products;
 that were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor corporation.

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Sec. 10. A successor corporation may establish the fair market value of the total gross assets, including intangible assets, of a transferor corporation to determine limitations under section 7 of this chapter by any reasonable method, including:

- (1) by reference to the going concern value of the assets;
- (2) by reference to the purchase price attributable to or paid for assets in an arms length transaction; or
- (3) in the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

Sec. 11. (a) If the total gross assets of a transferor corporation include liability insurance issued to the transferor corporation, this chapter does not affect the applicability, terms, conditions, or limits of the liability insurance.

(b) This chapter does not affect the rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including:

- (1) preenactment settlements resolving coverage related disputes; or
- (2) contracts regarding the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, self insured periods, or periods as to which insurance is uncollectible or unavailable.

(c) A settlement of a dispute concerning liability insurance coverage entered into by a:

- (1) transferor corporation; or
- (2) successor corporation;

with the insurers of a transferor corporation before July 1, 2009, is determinative of the total coverage of liability insurance to be included in the calculation of a transferor corporation's total gross assets under this chapter.

Sec. 12. (a) Except as provided in subsections (b) through (d), the sum determined as the fair market value of the total gross assets of a transferor corporation as of the time of a merger or consolidation for purposes of determining the limit on the cumulative successor asbestos related liabilities of a successor corporation under this chapter shall be adjusted annually at a rate equal to the sum of the following:

- (1) The prime rate listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation. If the prime rate is not published in the first edition of the Wall Street Journal, then a reasonable

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determination of the prime rate on the first day of the year may be used.

(2) One percent (1%).

(b) The rate described in subsection (a) may not be compounded.

(c) The adjustment of the fair market value of the total gross assets of the transferor corporation as of the time of the merger or consolidation shall continue as described in subsection (a) until the date as of which the adjusted value is first exceeded by the cumulative amounts of successor asbestos related liabilities paid or committed to be paid by or on behalf of:

- (1) the successor corporation;
- (2) any predecessor corporation; and
- (3) the transferor corporation;

after the time of the merger or consolidation.

(d) No adjustment of the fair market value of total gross assets of a transferor corporation under this section shall be applied to any liability insurance."

Renumber all SECTIONS consecutively.

(Reference is to HB 1167 as printed January 27, 2009.)

VAN HAAFTEN

HOUSE MOTION

Mr. Speaker: I move that House Bill 1167 be amended to read as follows:

Page 6, between lines 41 and 42, begin a new paragraph and insert:

"(m) For an action commenced under subsection (g), the court shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;**
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or**
- (3) litigated the action in bad faith.**

(n) The award of fees under subsection (m) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees

EH 1167—LS 6556/DI 102+



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twice."

Page 8, between lines 22 and 23, begin a new paragraph and insert:

"(i) For an action commenced under subsection (h), the court shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;**
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or**
- (3) litigated the action in bad faith.**

(j) The award of fees under subsection (i) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice."

Page 10, after line 5, begin a new paragraph and insert:

"(f) For an action commenced under subsection (e), the court shall award attorney's fees as a part of the costs to the prevailing party, if the court finds that either party:

- (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;**
- (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or**
- (3) litigated the action in bad faith.**

(g) The award of fees under subsection (f) does not prevent a prevailing party from bringing an action against another party for abuse of process arising in any part on the same facts. However, the prevailing party may not recover the same attorney's fees twice."

(Reference is to HB 1167 as printed January 27, 2009.)

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1167, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning asbestos.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1167 as reprinted January 30, 2009.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 0.

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